

MEMORANDUM

IMFR

Substitute to
Agenda Item No. 2(C)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 10, 2005

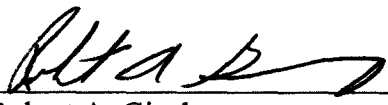
FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Ordinance prohibiting
underestimation of real
estate taxes

The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Dennis C. Moss.

This substitute differs from the original in that it makes the following changes:

- "transaction" as used in the ordinance is clarified to include the course of dealings leading up to, for example, a real estate contract or closing, and such contract itself, *see* section (a) (4);
- "first year after the transaction" is replaced with "the tax year beginning January 1st after the closing," *see* sections (c) & (g);
- jurisdiction is made plural, *see* section (d);
- "most recent" is added before "millage rate," *see* section (d); and
- "recission" is removed from title of section (g).


Robert A. Ginsburg
County Attorney

RAG/jls

Memorandum



Date:

To: Honorable Chairman Joe A. Martinez
and Members Board of County Commissioners

From: George M. Burgess
County Manager

A large, stylized handwritten signature in black ink, appearing to read "Burgess".

Subject: Ordinance prohibiting underestimation of real estate taxes

The proposed ordinance prohibiting the underestimation of real estate taxes may have a fiscal impact to Miami-Dade County.

This ordinance does not require the County to notify businesses engaged in real estate activities about the requirements dictated in this ordinance nor consumers regarding the availability of information. However, should the County opt to notify these businesses or consumers engaged in real estate activities about the requirements dictated in this ordinance, there may be costs associated with such notifications. Notification to consumers would occur predominantly through the dissemination of printed public information, press releases, and on the County's web portal. Notification to businesses would typically be by mail.

Although there are approximately 56,400 residential sales and 12,000 homeowner tax appeals each year, there is no data available from which to determine the number of homebuyers that are provided with understated estimates of future real estate taxes and how many of those would file a complaint. Therefore, the cost of enforcing the provisions of the proposed ordinance on a complaint driven basis cannot be determined at this time.

A handwritten signature in black ink, appearing to read "Ally My".


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez **DATE:**
and Members, Board of County Commissioners

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No.

3-1-05

ORDINANCE NO. _____

ORDINANCE PROHIBITING THE UNDERESTIMATING OF REAL ESTATE TAXES IN A TRANSACTION WITH A CONSUMER; PROVIDING A SAFE HARBOR IF A BUSINESS USES THE COUNTY WEBSITE TO ESTIMATE TAXES; PROVIDING DEFINITIONS, A REBUTTABLE PRESUMPTION, VICARIOUS LIABILITY, PENALTY, REMEDIES, PRIVATE CAUSE OF ACTION, SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

WHEREAS, certain businesses have provided homebuyers with estimates of future real estate taxes that seriously understate the actual amount of the taxes that are subsequently assessed, thereby causing the homebuyers to be mislead regarding the amount they must budget to purchase a house and regarding whether they can even afford to purchase the house; and

WHEREAS, the amount of the underestimates have been substantial, for example: in one case, a consumer was told her taxes would be \$3,948 when the actual tax bill was \$6,993; in another case a family was told the amount of taxes would be \$3,869 when the actual tax bill was \$6,938; in another case a homebuyer was told the amount of taxes would be \$3,528 when the actual tax bill was \$7,005; and

WHEREAS, homebuyers naturally experience shock and dismay when they receive a real estate tax bill that is sometimes almost twice the estimate they were given when they decided to purchase the home and they are therefore suddenly confronted with the possibility that they may not be able to make all necessary mortgage, insurance, and tax payments; and

WHEREAS, the Board of County Commissioners of Miami-Dade County has provided a Tax Estimator computer program on the Property Appraiser's website for the specific purpose of

allowing businesses and others to obtain a quick and fairly-reliable estimate of future real estate taxes on a property: and

WHEREAS, this problem would be greatly reduced if businesses used the Tax Estimator Program on the Property Appraiser's website to calculate estimated future taxes,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. A new section of the Miami-Dade County Code is created to read as follows:

Sec. _____. Underestimating Real Estate Taxes to Consumers.

(a) **Definitions.** As used in this ordinance, the following terms will have the meaning indicated:

- (1) "business" shall mean any individual or business entity engaged in the business of selling real estate, making real estate loans, acting as a mortgage broker, issuing title insurance, or closing on real estate contracts.
- (2) "consumer" shall mean a person (1) who is buying or selling residential real estate for the purpose of residing in the real estate or having a family member reside in the real estate, or (2) who is buying or selling a service or product related to such a transaction, including but not limited to loans, mortgages, and closing services.
- (3) "real estate taxes" shall mean ad valorem property taxes annually assessed and levied on real estate by a unit of local government pursuant to section 9 of Article 7 of the Florida Constitution.
- (4) "transaction" shall mean the course of dealings leading up to a contract and the contract itself, including but not limited to a contract for the purchase of residential real estate, for a loan, for

title insurance, for a mortgage, or for closing on the same.

- (b) **Violation.** It shall be a violation of this section for a business intentionally or negligently to underestimate the future real estate taxes in a transaction with a consumer.
- (c) **Rebuttable Presumption.** It shall be a rebuttable presumption that a business intentionally or negligently underestimated the future real estate taxes if the amount of the actual real estate tax bill for the tax year beginning January 1st after the closing is greater than 125% of the estimate of the real estate taxes. In making this calculation, a deduction from the actual tax bill shall be made for (1) any increase in the assessment of the property caused by any act of omission or commission of the consumer, including but not limited to, the consumer's failure to timely file for a homestead exemption or the consumer's actions in making additions or renovations to the property; and (2) any increase in the millage rate by a government entity in excess of the millage rate of that jurisdiction at the time of the estimate.
- (d) **Safe Harbor.** Notwithstanding the other provisions of this ordinance, a business shall be entitled to a safe harbor from the provisions of this ordinance if the business provides the consumer, prior to the signing of a contract, a written estimate of the taxes by using the Tax Estimator computer program provided on the Miami-Dade County Property Appraiser's website. To qualify, such estimate must use the most recent millage rate of the jurisdictions in which the property is located and no less than the anticipated purchase price of the subject property. In such event, it shall be deemed that no violation of this ordinance occurred for that transaction.
- (e) **Vicarious Liability.** A business shall be vicariously liable for the violations of this ordinance by their employees and agents and are subject to the penalties and remedies, including damages and rescission of contract, provided herein. Such vicarious liability shall not excuse a business entity or person from direct liability under this ordinance.
- (f) **Penalty.** The first violation of this ordinance by a business shall be punished by a fine of five hundred dollars. The

second and each subsequent violation of this ordinance shall be punished by a fine of one thousand dollars.

- (g) **Private Right of Action for Damages.** Any consumer who enters into a contract in reliance on an estimate of future real estate taxes in violation of this ordinance shall have a private right of action to sue for damages that resulted from the violation. Damages for taxes shall not exceed the multiple of five times the difference between the estimate of real estate taxes and actual real estate taxes levied for the tax year beginning January 1st after the closing. Any consumer prevailing in an action authorized by this section shall be entitled to an award of its attorney's fees.

Section 2. Chapter 8CC of the Code of Miami-Dade County, Florida, is hereby amended to read as follow: ¹

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
<i>*</i>	<i>*</i>	<i>*</i>
>> _____ [add new section]	<u>Underestimating millage rate when calculating future taxes</u>	<u>First violation \$500.00; additional violations \$1,000.00<<</u>

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity. Thus, for purposes of example and not for purposes of limitation, if this ordinance is determined to be invalid as to any particular industry or profession, it shall continue to be valid as to the other businesses covered by this ordinance; if any remedy in this ordinance is determined to be invalid, the remaining remedies shall continue to be valid; if any presumption in the ordinance is determined to be invalid, the remainder of the ordinance shall continue to be valid.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RAC

Prepared by:

T W L

Thomas W. Logue

Sponsored by Commissioner Dennis C. Moss